

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW HAMPSHIRE

IMS HEALTH INCORPORATED, a Delaware)
corporation and VERISPAN, LLC, a Delaware)
limited liability company.)

Plaintiffs,)

vs.)

KELLY A. AYOTTE, as Attorney General of)
the State of New Hampshire,)

Defendant.)
_____)

Case No. 06-CV-280-PB

Declaration of Hossam Sadek in Support
of Plaintiffs' Motion for Preliminary Injunction

I, Hossam Sadek, hereby declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age and have personal knowledge of the information provided in this declaration. I am vice president of the sales force effectiveness business line of IMS Health Incorporated ("IMS Health") for the Americas region. I have management responsibility for a number of IMS Health's products and services throughout North and South America, including doctor level services in the United States. I have been employed by IMS Health and its affiliates for more than 17 years.

IMS Health Background

2. IMS Health is a publicly traded company that was founded as Intercontinental Marketing Services in 1954. IMS Health is the world's leading provider of information, research and analysis to the pharmaceutical and healthcare industries, with data collection and reporting activities in over 100 countries. The company receives and processes vast quantities of health care data each year. In the United States alone, IMS Health collects information from thousands

of sources: pharmaceutical wholesalers, pharmacies, physicians, hospitals, and clinics, and processes millions of records each week (de-identified with respect to patient information). The information collected is then aggregated with other information, analyzed and made available to IMS Health's customers through dozens of services designed to help them drive decisions and shape strategies. All of IMS Health's databases are composed of patient-de-identified data. This means that IMS Health does not collect, process, use or transfer information that contains the identity of patients in any of its subscription services.

3. IMS Health's clients include pharmaceutical companies, biotechnology firms, pharmaceutical distributors, government agencies, consulting organizations, the financial community and others.

4. In addition, IMS Health frequently makes information available without charge to academic researchers (researchers at universities throughout the United States), medical researchers (researchers at the Centers for Disease Control, the Institutes of Medicine of the National Academy of Science, the Mayo Clinic and Memorial Sloan-Kettering), humanitarian organizations (American Red Cross), law enforcement authorities (state attorneys general, U.S. Department of Justice, the U.S. Federal Trade Commission, and the U.S. Drug Enforcement Administration), and industry observers (journalists).

5. With the aid of IMS Health's vast amount of data, these individuals and organizations are able to track patterns of disease and treatment, conduct outcomes research, implement best practices, and apply health economic analyses. The company's databases are essential to effective implementation of prescription drug recall programs, performance of pharmaceutical market studies, efficient pharmaceutical sales and marketing resource allocation, and assessment of drug utilization patterns (*e.g.*, on-and-off label uses and regional variations in physician prescribing behavior).

6. IMS Health's prescriber-level databases are also essential to support research, analysis, development and implementation of practice guidelines and public health policy for the advancement of patient health.

Prescription Data

7. In the United States, approximately 1.4 million prescribers are licensed to write prescriptions. Prescriptions are written for approximately 8,000 different pharmaceutical products and many of these products are dispensed in various forms, strengths, and doses.

8. Prescriptions are dispensed by approximately 54,000 retail pharmacies throughout the United States, as well as other medical facilities licensed to fill prescriptions.

9. Retail pharmacies in the United States are primarily composed of chain pharmacies, independent pharmacies, mass merchandisers and food stores with in-store pharmacies, mail order pharmacies, and long term care pharmacies.

10. Retail pharmacies acquire prescription data during the regular course of business. They then license, sell, or transfer patient de-identified prescription information to IMS Health.

11. For many years, IMS Health has been purchasing patient-de-identified prescription information from retail pharmacies throughout the United States, including pharmacies in the State of New Hampshire, by entering into contracts with the pharmacies directly or through intermediaries. Since 1993, IMS has offered prescriber-identifiable information services to its customers.

12. The information that IMS Health purchases from the New Hampshire pharmacies includes the name of the pharmaceutical product, the form, strength and dosage of the product, the quantity dispensed, and the name and address of the prescriber. Pharmacies do not provide patient-identifiable information to IMS Health.

13. Currently, IMS Health acquires, aggregates and analyzes information relating to

billions of prescription transactions per year throughout the United States.

14. IMS Health acquires, licenses, sells, uses, or transfers the prescription information for two distinct purposes:

- a. First, in order to make a profit.
- b. Second, to improve public health and welfare by licensing, selling, and transferring it to pharmaceutical companies and to other entities that devote substantial resources to using the information to improve public health and welfare.

15. Some of the entities to whom IMS Health licenses, sells, or transfers the information use the information for advertising, marketing, and promotional purposes. These entities and others also use the information for other purposes that are not associated in any way with advertising, marketing, and promotional purposes.

16. IMS Health strongly believes that the widespread dissemination and use of the information that it gathers and analyzes improves the health and welfare of consumers.

17. IMS Health does not license, sell, use or transfer the information for any deceptive or unfair purposes and does not license, sell, use or transfer the information to persons or entities that they know would use the information for any deceptive or unfair purposes.

The Uses of IMS Health's Prescriber Data

18. Upon receipt of prescription data from a source, IMS Health associates combine the prescription data with drug and prescriber reference files for various purposes, including (a) to match each prescription to the correct prescriber, (b) to identify and use the correct name of the prescriber, and (c) to add address, specialty and other professional information about the prescriber to the prescription data. These reference files are created using information obtained from various sources. The American Medical Association's Physician Masterfile is a source of information for reference files on prescribers. The AMA's Masterfile contains demographic,

educational, certification, licensure, and specialty information for more than 800,000 active U.S. medical doctors (MDs) and over 90% of the doctors of osteopathy (DOs), including members and nonmembers alike.

19. IMS Health uses patient-de-identified prescription data, together with the reference file information, to produce a variety of databases. IMS Health uses these databases to create a number of different reports and services regarding prescribed pharmaceutical products, some of which include prescriber-identifiable information and some of which is aggregated and reported at a broader geographic level. IMS Health then licenses the information from these reports and services to third parties for many different uses.

20. The patient-de-identified prescription information supplied by IMS Health to its pharmaceutical and biotechnology clients are used for many purposes. For example, the information allows these clients to:

- a. prioritize the release of public safety news alerts based on physician prescribing details,
- b. accelerate innovation through insight into the needs and habits of those whose health the new drugs are designed to improve,
- c. determine which products to develop and license and what acquisitions to consider,
- d. disseminate effectively and quickly vital, life-prolonging information to those prescribers for whom the information is relevant and most useful,
- e. allocate effectively valuable, life-prolonging sample medications to those prescribers whose patients need them most and are more likely to use them,
- f. determine whether a particular prescriber is prescribing products that the pharmaceutical companies have determined to be inappropriate in light of the development of new products that may be more effective, safer, or less expensive,
- g. implement prescription drug recall programs,
- h. evaluate, segment, target, size, compensate and deploy its sales force,

- i. allocate limited marketing resources to individual prescribers in a manner that reduces cost and saves time, and
- j. understand managed care's effect on the U.S. pharmaceutical marketplace.

21. The patient-de-identified prescription information that IMS Health makes available without charge to academic and medical researchers, humanitarian organizations, law enforcement authorities, and industry observers are used for a variety of public activities. Examples of these activities include:

a. Asthma in low income areas. A study in New York used IMS Health's prescriber-level information to examine physician-prescribing patterns in under-served urban areas to determine patterns of under-treatment of patients with asthma. There was substantial evidence that asthma controller medications were underutilized, which reflected issues in both physician education and public perceptions. Feedback on the study findings was provided to physicians to engage them in implementing appropriate public health solutions.

b. Community intervention to reduce overuse of antibiotics. A research study relied on IMS Health's prescriber-level data to complete a pediatric study on the judicious use of antibiotics. The objective of the study was to assess the impact of parent and clinician education on antibiotic prescribing and carriage of penicillin-non-susceptible streptococcus pneumoniae in children. The study resulted in a multifaceted education program that led to community-wide reductions in antibiotic prescribing.

c. Regional impact of bioterrorist threats on prescribing. Wisconsin researchers at the Marshfield Clinic Research Foundation used IMS Health's prescriber-level information to determine if the public demand for fluoroquinolones, such as Cipro, post-9/11 bioterrorist threats would spread to communities not directly affected by anthrax scares in New York, New Jersey, Connecticut, Pennsylvania, Virginia, Maryland and Florida.

22. IMS Health does not sell or market pharmaceutical products or drugs to

prescribers.

23. Patient-de-identified prescription information without prescriber-identifiable information is not an adequate substitute for accurate information regarding the actual prescriptions written by individual physicians for many reasons, including: (a) pharmacies fill prescriptions that come from distant prescribers, (b) information from pharmacies frequently does not include accurate zip code information for the prescriber, (c) information from pharmacies does not include the specialty of the prescribers who wrote the prescription, (d) the information is not useful for all of the uses described in paragraphs 20-21 above, and (e) significant errors in the information cannot be ascertained.

The Prescription Restraint Law's Impact on IMS Health' Services

24. I have reviewed New Hampshire House Bill 1346, 2006 N.H. Laws 328, codified at N.H. Rev. Stat. Ann. 318:47-f & 318:47-g & 318-B:12, IV (2006) (the "Prescription Restraint Law").

25. The statute prohibits pharmacies and other similar entities from continuing to license, sell, use, or transfer prescription records containing prescriber-identifiable information to IMS Health for certain commercial purposes. The statute imposes severe criminal penalties for violations of the statute and also authorizes civil suits for damages, punitive damages, and injunctive relief to be brought for violations of the statute.

26. Prescription Restraint Law does not explain how pharmacies and similar entities are to determine whether a particular transaction is for a commercial purpose. It does not, for example, state whether the purpose of the seller of the information, the buyer of the information, the end-user of the information or a combination of all three is determinative of whether a transaction is for a commercial purpose.

27. Following passage of the act and as a consequence of the severe criminal and civil

penalties that it authorizes, IMS Health's sources of prescription data required restrictions placed on the prescription data in order to ensure compliance with the act.

28. In order to continue acquiring prescription data while it challenges the constitutionality of the Prescription Restraint Law, IMS Health has entered into agreements with its sources of prescription data that state that IMS Health will not use the prescription data for purposes that are prohibited under the act until such time as the act is declared unconstitutional or otherwise invalidated or enjoined.

29. The act defines a "commercial purpose" as "advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force."

30. In light of this definition and its agreements with its sources of prescription information, IMS Health has had to cease some of its regular business practices in buying and selling records containing prescriber-identifiable data. Pharmacies and other similar entities cannot continue providing prescriber-identifiable data to IMS Health for purposes restricted by the act. IMS Health does not believe it can continue to license, sell, or transfer such data from New Hampshire prescription records to pharmaceutical companies for use in their marketing efforts without being charged with a criminal violation of the statute and being subjected to suits for civil compensatory and punitive damages, and injunctions. IMS Health therefore has stopped licensing, selling, or transferring to third parties located outside of New Hampshire, prescriber-identifiable data related to prescriptions filled in New Hampshire.

31. Because IMS Health is unable to provide customers with prescriber-identifiable data originating from New Hampshire, IMS is unable to continue licensing this information to customers for a fee.

32. As important, IMS Health will be injured irreparably while the Prescription Restraint Law remains in force because it will be unable to communicate to pharmaceutical companies lawfully obtained, truthful information about matters of public importance and concern -- the prescribing practices of New Hampshire prescribers. While the information remains locked in IMS Health files, it cannot be used by pharmaceutical companies and others for all of the socially useful purposes set forth in paragraphs 20-21 above. The statute also inflicts irreparable injury on the pharmaceutical companies that wish to communicate with prescribers, and most importantly, it prevents important information from getting to prescribers to help them make the best decisions they can make about the drugs that they will prescribe for their patients.

33. Ultimately, IMS Health succeeds as a company only as long as it can continue to deliver valuable information that helps pharmaceutical companies and others efficiently deliver effective, innovative and safe healthcare products to the public. The Prescription Restraint Law directly impairs the ability of IMS Health to fulfill that mission in New Hampshire.

Executed on July 27, 2006, in Plymouth Meeting, Pennsylvania.

/s/ Hossam Sadek
Hossam Sadek